



POLICE DEPARTMENT

August 13, 2008

MEMORANDUM FOR: Police Commissioner

Re: Detective Charles Kuhno  
Tax Registry 899441  
Central Robbery Section  
Disciplinary Case No. 83203/07  
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The above-named member of the Department appeared before me on February 19, 2008, and March 20, 2008, charged with the following:

1. Said Detective Charles Kuhno, assigned to the 103<sup>rd</sup> Detective Squad, while off-duty, on or about February 1, 2007, at a location known to this Department, in ██████████ County, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, in that said Detective did wrongfully engage in a physical altercation with a person known to this Department.

PG 203-10 – PAGE 1 – PARA 5      PUBLIC CONTACT - PROHIBITED  
CONDUCT

2. Said Detective Charles Kuhno, assigned to the 103<sup>rd</sup> Detective Squad, while off-duty, on or about February 1, 2007, at a location known to this Department, in Suffolk County, having been involved in an unusual police occurrence, did fail to remain at the scene of said incident, as required.

PG 212-32 – PAGE 1 – PARA 1      OFF DUTY INCIDENTS

3. Said Detective Charles Kuhno, assigned to the 103<sup>rd</sup> Detective Squad, on or about February 1, 2007 and/or March 1, 2007, at a location known to this Department, did engage in conduct prejudicial to the good order, efficiency or discipline of this Department, in that said Detective did wrongfully impede an official Department investigation, in that said Detective did provide inconsistent statements to Members of Service regarding a domestic incident which occurred on February 1, 2007. (As amended)

COURTESY • PROFESSIONALISM • RESPECT

PG 203-10 -- PAGE 1 -- PARA 2(D) PUBLIC CONACT -- PROHIBITED  
CONDUCT

The Department was represented by Lisa McFadden, Esq., Department Advocate's Office, and the Respondent was represented by Peter Brill, Esq.

The Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent is found Guilty of Specification Nos. 1 and 2 and the Department's motion to dismiss Specification No. 3 is granted.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Police Officer Gary Osso, Police Officer Keith J. Kramer, Sergeant Robert Schmidt, Lieutenant George Howley, and Sergeant Charles Cinao. The Department offered the out-of-court statements made by [REDACTED] during her 911 call and the recording of the call and the transcript were admitted into evidence under Department's exhibits (DX) 5A and 5B respectively. The Department also offered the out-of-court statements made by [REDACTED] during her interview with investigators from the Queens North Investigations Unit and the tape and transcript were admitted into evidence under DX 4A and 4B.

[REDACTED]<sup>1</sup>  
[REDACTED], the Respondent's wife and complainant in this case, did not testify at this trial. The Assistant Department Advocate informed the Court that while she did not speak with [REDACTED] it was her understanding that [REDACTED] was made aware of this trial and was not appearing to testify in that "Subpoenas were sent [to [REDACTED]] from our office, regular and certified mail, and a subpoena was dropped off, actually handed to the Respondent" by the Department's Litigation Support Unit (The Unit).

The Assistant Department Advocate submitted to the Court the Department's Litigation Support Unit's report of the Unit's effort in notifying [REDACTED] of her expected appearance at trial. On February 11, 2008, service of a subpoena was made to [REDACTED] by certified mail, returned receipt requested and first class mail to her home address. On February 14, 2008, an investigator from the Unit was present at [REDACTED]'s home and spoke with the Respondent. The Respondent told the investigator that "it's Valentines Day can you please come another day." The investigator then placed a copy of the subpoena in [REDACTED]'s "mail box along with contact information." (CX 1)

The counsel for the Respondent, Mr. Brill, informed the Court that he spoke to his client regarding [REDACTED]'s appearance and advised him that he should not interfere with the service of the subpoena and her appearance in Court "was solely within her discretion." According to Mr. Brill the Respondent informed him that [REDACTED] "is seven months pregnant and had no interest in coming; she wanted this behind her."

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<sup>1</sup> The transcripts of [REDACTED]'s 911 call and her interview show the spelling of her first name as [REDACTED] but she actually signed her first name on the Domestic Incident Report as [REDACTED]

's 911 call

The 911 call begins with [REDACTED] crying hysterically, breathing very heavily, and giving her address to the 911 operator. After the operator confirms the address, she asks [REDACTED] about her problem. [REDACTED] responds, "Family dispute, okay, my husband hit me. Please send someone okay?" The operator asks [REDACTED] if she is injured, and [REDACTED] replied, "I don't know, my lip is probably bleeding." [REDACTED] indicated she did not want an ambulance, and stated that she did not feel safe. She also indicated that she has a four-year old and calls for her at this point of the conversation. The operator assures her that they will get a police officer to the scene, and [REDACTED] tells her, "I'll just stay on the phone because he won't leave. I just want him to get out."

At this point the operator asks [REDACTED] to calm down for the sake of her child, and [REDACTED] complies. She goes upstairs and begins talking to her child, telling her "It's okay." The operator asks [REDACTED] if she is okay, and [REDACTED] replies, "I think so. My husband's a city cop but he frightens me at times." [REDACTED] affirmed that he was still there, and at this point of the call the child can be heard calling out to her father, the Respondent. The daughter clearly asks, "Where are you going, Daddy?" [REDACTED] also begins talking to the Respondent, stating, "You didn't learn, Chucky. Keep your hands to yourself." The operator again asks [REDACTED] if everything is alright, and [REDACTED] responds, "Yeah. He's more worried about his job right now."

During this portion of the call a male voice can clearly be heard yelling in the background. [REDACTED] states immediately after, "He wants me to hang up." After she makes this statement one can hear the male voice yelling again, and then [REDACTED] tells the operator "And he's leaving the house. He's always up in my face; he wants me to be

afraid of him." The child also calls for her father again at this point. The operator assures [REDACTED] that an officer will be there shortly, and the call ends.

#### [REDACTED]'s Interview

Lieutenant Howley and Sergeant Burke of Queens North Investigations and Captain Tamola of the 114 Precinct interviewed [REDACTED] on February 2, 2007 at 12:07 a.m. [REDACTED] stated that she has been married to the Respondent for five years. They have one child, a four year old girl. [REDACTED] explained that on that night they were treating their daughter for her [REDACTED] and exchanged words about their daughter's care. [REDACTED] stated that neither of them drank that night. [REDACTED] reiterated that words were being exchanged, and then "he would come, you know, in my face and then I would tell him, you know, step away and then he would go upstairs and I would say something, he'd say something, he'd come back." [REDACTED] explained that "in her face" meant that the Respondent would be very close, and that she felt he was mad at her because she was calling him names. She agreed that he would approach her very closely because he did not want to be called names.

[REDACTED] stated that there was no pushing at that time, and that the Respondent went to put their daughter to bed and resumed the fight in the kitchen when he came back downstairs. She affirmed that the fight got physical because he was in her face again. When he returned, the Respondent told [REDACTED] to stop calling him names. He was getting in her face again and she could not step away. [REDACTED] got angry because of his proximity to her, and said that she was not afraid of the Respondent. The Respondent replied that she was and [REDACTED] threw the television remote at the Respondent, although it did not hit

him and landed on the floor by the bed. At some point during this argument the Respondent struck [REDACTED] on the left side of her face. [REDACTED] could not remember whether she was struck before or after she threw the remote, nor did she remember if the Respondent used an open hand or closed fist. When asked if she had any injuries, [REDACTED] responded, "Thank God, no, I just felt it."

After the Respondent struck her, she proceeded to call 911 because she had previously warned him she would call. [REDACTED] explained that again the Respondent was in her face and that the argument would not end. She then said, "When I was on the phone I was by the door, I opened up the doors to get his attention, something to, you know, just get him to, like, get out of my area so I opened to door and he closed the door and that's when I got it in the mouth." [REDACTED] agreed she had been struck a second time, although again she did not remember if it was with a closed fist or an open hand. [REDACTED] stated that when she was calling 911 the Respondent was telling her not to call. She stated, "I didn't know where to go, I didn't know what to do, I just want it to end. We have a very stressful life." When asked if the Respondent remained in the house as she was calling 911, [REDACTED] said, "He left. He took some tapes of ours that we got from the library so I guess that was his out to go and get out, but he knew I called, because he knew because I was giving the information over the phone." [REDACTED] stated that the Respondent did not threaten her or her safety at any time, nor did he threaten to hurt himself.

[REDACTED] stated that in previous arguments they had just gotten in each other faces, and when asked if she had been struck before, she said, "Maybe just like a bear hug or, you know, an arm around, like, this area." She confirmed her previous arguments were

not like the argument that evening. [REDACTED] also stated that after the Respondent left the scene she called him because she wanted to tell him that the police had his guns. [REDACTED] was asked if there were any threats made in that conversation with the Respondent, and she replied that he never wanted her "messing with his job." [REDACTED] was also asked why she wanted the guns removed, and she explained that she did not want them in the house any longer. [REDACTED] reiterated that she just called the Respondent to tell him that the police took his guns. [REDACTED] was asked, "You didn't tell [REDACTED] County you wanted him to take the guns out?" and [REDACTED] replied, "No." She also added, "I had fear of him coming back and finding out that the cops were here." She denied wanting to add anything else, and did not want to pursue criminal charges. [REDACTED] said she only wanted to have the incident documented. The interview ended at 12:20 a.m.

Police Officer Gary Osso

Police Officer Gary Osso has worked in the 4 Precinct of the [REDACTED] County Police Department ([REDACTED] PD) for approximately 19 years, having been assigned there in January of 1989. Osso was on duty February 1, 2007, working a tour of duty from 9:00 p.m. on February 1 until 7:00 a.m. on February 2. On that day Osso was in Sector Car Unit 407 on general patrol with Police Officer Keith Kramer. At 9:09 p.m. they received instructions to respond to [REDACTED] on a 10-85, a violent domestic incident. They were informed over the radio that the incident was a husband versus wife where the wife was hit twice. They were also informed that the husband was an off-duty member of the Department.

Refreshing his recollection using Department's Exhibit (DX) 1, a document that included "details of the incident, nature, time of arrival, any notifications of supervisors, time that I leave, when I'm finished with the assignment," Osso stated that they received the call at 10:00 p.m. and that they arrived on the scene at 10:17 p.m.

After their arrival Osso learned the names of the parties involved, specifically the name of [REDACTED]. He saw [REDACTED] at the residence and spoke to her. He described her demeanor as slightly nervous and that [REDACTED] told him that she and her husband, the Respondent, had a verbal argument which included name calling. [REDACTED] stated she was either punched or slapped in the face during the incident, just prior to calling 911. Osso testified that [REDACTED] stated the Respondent left and that Osso did not see him at the residence at all.

Osso was later advised that the Respondent responded to the 4 Precinct of the SCPD. Osso stated that DX 1 had the Respondent arriving at 11:07 p.m. Osso also stated that while he was at the residence he observed that [REDACTED] had a small cut or laceration, a minor injury, on her lip. He testified that this injury appeared to be recent, and that he documented the injury on a Domestic Incident Report (DX 2) that he completed while on the scene and filed on February 1, 2007. On DX 2 Osso wrote, "Complainant [REDACTED] received minor cut on lip and refused medical attention/rescue at this time." On DX 2 Osso also marked "Yes" in response to the question "Is the victim injured, yes or no?" Osso testified that a Domestic Incident Report, such as DX 2, is completed while sitting with the victim. During a Domestic Incident Report, Osso will speak with the Complainant and write down a narrative of the incident in the narrative portion of the report. After the narrative portion, there is a section of the report where



“the victim can write in her own words a statement of allegations.” Next Osso asks the Complainant “if [the Complainant’s statement] is the same as the narrative that I wrote above, rather than rewrite the whole thing all over again, if she wants to just write ‘same as above,’ she can write ‘same as above’ in that section.” Such was the case during Osso’s report of the incident on February 1. The Complainant also signs the report, next to a statement that reads “False statements made here are punishable as a Class A misdemeanor pursuant to Section 210.45 of the Penal Law.”

After giving the details of the incident for the Domestic Incident Report, [REDACTED] indicated to Osso that she did not want to pursue charges with reference to the incident, and that she merely wanted documentation that the incident occurred. Osso believes he wrote in the narrative report, “Complainant refused to press charges at this time.”

Osso then explained that during a domestic incident, the victim receives a blue sheet for further assistance, with information for “any type of follow-up,” including Family Court and District Court. Osso also testified that at some point a supervisor was called to the scene at 10:20 p.m. He explained supervisors respond to all domestic incidents involving physical contact, “whether it be harassment, assault, or any other physical contact incident.” Osso further testified that he recovered two pistols from the [REDACTED] residence and that it was his understanding these firearms were the Respondent’s weapons issued to him by the Department. Osso never spoke to [REDACTED] after the incident, and [REDACTED] never contacted him to recant the allegations.

On cross-examination, Osso could not say if [REDACTED] was crying or appeared upset in addition to appearing nervous, stating that he did not recall anything further than nervousness. Osso was unable to elaborate on how [REDACTED] appeared nervous, and agreed

that [REDACTED] did not know whether she had been punched or slapped. Osso agreed that on DX 2, his indication of punching or slapping would indicate that only one occurred, not both. Osso also denied being present when this incident took place, and that he would have no way of knowing whether [REDACTED] was lying and just had to go by what she told him.

Osso agreed that he indicated "apparent minor injury" in the "Victim Injured" section of DX 2, and that this referred to a cut or laceration of [REDACTED]'s lip. When asked "Could you tell if [the injury] was caused by violence, or caused by a chapped lip, dry skin, something along those lines?" Osso responded, "No." Osso could also not recall if her lip appeared to be swollen or simply abraded.

Osso affirmed that the "Status" section on DX 2 read "Exceptionally Cleared," and explained that it meant the case could still be opened even though the victim did not currently want to pursue charges. Osso also denied that the SCPD could "go forward" and make an arrest based upon the evidence presented, because they were not at the scene to witness the violation. He agreed that since the extent of the injuries would only have made a harassment case under the Penal Law, the SCPD could not have gone forward without Kuhno's cooperation.

Examining DX 1, Osso agreed that it read "One party 10-19" at 10:18 p.m., and explained that 10-19 meant gone upon arrival, clarifying that it was [REDACTED]'s husband, the Respondent, in this incident. Osso affirmed that at 10:35 p.m., Kramer called in asking for a report number in order to fill out the Domestic Incident Report.

Osso denied that he had any dealings with the Respondent at any time, and agreed that he only dealt with [REDACTED]. He denied having ever responded to that location before

or since the incident. Osso affirmed that it was his handwriting that indicated "same as above" next to [REDACTED]'s writing, and that it was his handwriting in the narrative section.

On question by the court, Osso testified that [REDACTED] made the 911 call.

On re-direct examination, Osso explained that a mandatory arrest on a domestic violence incident involved a serious injury or a assault 2°, which is a felony. He also explained that assault 3° is a misdemeanor, and that "one of the reasons why the supervisor responds is to determine if a mandatory arrest has to be made." Osso also indicated that he believed an arrest was not mandatory for assault 3°. Osso agreed that, it was up to the victim to decide if he or she wanted an arrest made in a case like this one.

Police Officer Keith J. Kramer

Police Officer Keith J. Kramer, employed by the [REDACTED] PD, testified that on February 1, 2007 he responded with Osso to [REDACTED] and spoke with [REDACTED]. He stated that she was upset, although he could not recall if she had been crying. Kramer also observed a cut on her lip.

Kramer stated he and Osso arrived at the scene at 10:17 p.m. and remained until about 10:45 p.m., staying with [REDACTED] for the duration. He did not recall if anybody attempted to contact the Respondent while they were at the scene. Also present at the scene was [REDACTED]'s young daughter, who was 4 to 6 years old. Kramer described the daughter as calm. Kramer also stated that a supervisor was called to the scene due to [REDACTED] county policy where a supervisor must be notified if there is any physical injury or an off-duty police officer is involved.

On cross-examination, Kramer denied being present when the alleged altercation took place. He also denied having any contact with the Respondent that night. Kramer admitted not knowing how [REDACTED] received the cut to her lip, stating that he only knew what she told them which he stated was recorded in the Domestic Incident Report. He denied being able to tell what had caused the cut on her lip, stating that he did not possess the necessary expertise to make such a determination.

Kramer denied ever having been to the residence before the incident, and also denied having been there since. Kramer did not recall if there was any swelling on [REDACTED]'s lip in addition to the cut.

Sergeant Robert Schmidt

Sergeant Robert Schmidt of the [REDACTED] PD also responded to [REDACTED] on February 1, 2007. After speaking with [REDACTED], Schmidt notified the [REDACTED] County Internal Affairs section, his Duty Lieutenant, and the Department's Internal Affairs Bureau (IAB) at the request of [REDACTED]'s Internal Affairs. He explained that this notification resulted from the involvement of the Respondent, a member of the Department. He made this notification between 9:30 p.m. and 10:00 p.m. after having been on the scene for half an hour. Schmidt testified that he did not know how long the officers remained on the scene, and that he left around 10:00 p.m.

Schmidt testified that an additional officer from the midnight shift also responded to the scene to give comfort to [REDACTED] and would stay until the midnight shift felt comfortable enough to leave her. Schmidt also stated that [REDACTED] appeared uncomfortable, although he did not recall the reason, and he called the other officer to

reassure her that the [REDACTED] PD would have somebody there until everything was resolved. Schmidt described [REDACTED]'s demeanor as "mildly upset, slightly upset."

On cross-examination, Schmidt stated that he could not recall the specifics of [REDACTED]'s injury, saying that he could only remember she had a minor injury to her mouth area.

Lieutenant George Howley

Lieutenant George Howley has been with the Queens North Investigations Unit for approximately seven years. He primarily works as a patrol monitor, responding to callouts, domestic incidents, and injured prisoners. Howley testified that he was sent to do an investigation at [REDACTED] involving the Respondent and [REDACTED] on February 2, 2007 at 1:45 a.m. Working on the investigation with Howley were Captain Christopher Tamola and Sergeant Burke.

Howley stated that only [REDACTED] was at the location when he arrived, and that he completed an interview with her. He described her demeanor as "calm, but visibly upset." Howley testified that he observed a bloody lip on [REDACTED] on her right side, underneath her bottom lip. Photographs were taken of [REDACTED]'s injury that night, which were submitted into evidence as DX 3A, B, and C. While reviewing the photos Howley was unable to observe the injury he saw on the night of the incident due to the fact that the injury was on the inside of [REDACTED]'s lip, and her closed mouth in the photographs prevented him from seeing it.

Howley interviewed [REDACTED] on the night of the incident using a tape recorder. He reviewed the tapes afterward numerous times to ensure that they were accurate, and then

secured the tapes at his command. The tape of the interview was stipulated into evidence as DX 4A, and the transcript of the interview was stipulated as DX 4B.

Howley testified that his interview with [REDACTED] lasted approximately five to ten minutes. After the interview, Howley gave [REDACTED] a counseling sheet for counseling services and then responded to the [REDACTED] County Precinct. He stated that the Respondent's weapons were recovered by the [REDACTED] D, and that they went to retrieve and voucher them. Howley testified that [REDACTED] specifically requested that the Respondent's guns be removed from the residence, although [REDACTED] claimed she was not in fear for her safety.

On cross-examination, Howley agreed that [REDACTED] indicated she was not in fear of the Respondent. Howley also agreed that he conducted the taped interview with [REDACTED] assisting the Duty Captain, who was also present at the scene. Howley acknowledged that they had conversations with [REDACTED] prior to conducting the taped interview. He recalled discussing the health of [REDACTED]'s child with her, stating that her daughter had [REDACTED] and that it was a very stressful period in their life. It was stipulated that in the transcript of the interview, [REDACTED] was asked "Do you have any injuries?" and responded "Thank God, no" followed by "I just felt it."<sup>2</sup>

Howley agreed that he did not interrupt [REDACTED] after her denial of injury despite the fact that he observed an injury earlier that night, nor did he indicate observing such an injury at any point during the taped interview.

Howley stated that he assisted the Duty Captain in preparing the 49<sup>3</sup> for the incident, and that he had a chance to review the 49 prior to testifying. The 49 was

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<sup>2</sup> The meaning of this statement, made by [REDACTED] is unclear in the transcript.

<sup>3</sup> A 49 refers to an internal Department memorandum.

submitted into evidence as Respondent's Exhibit (RX) A. After reviewing the document, Howley agreed that the Duty Captain prepared the 49 with Howley's assistance and the assistance of a sergeant. It was determined that the 49 was considered a business record of the Department.

Howley read the following statement from the 49: "Photographs were taken to document Mrs. Kuhno's condition, no injuries were observed." Howley admitted he possibly assisted in preparing that paragraph, although he did not know specifically who prepared the part "No injuries were observed." Howley agreed that the Duty Captain signed the 49, and that he observed the Duty Captain read the 49 prior to signing it. Howley clarified for the Court that he arrived at the location at about 12:07 a.m. on February 2, 2007.

Howley agreed that, to his recollection, there was a cut or abrasion on the inside of [REDACTED]'s lip. He also agreed that in the course of taking pictures of an assaulted individual, the object was to take pictures of the actual injury. Howley then denied being able to see an injury on any of the photographs taken that night. Howley acknowledged he has seen pictures in the past of other complainants where they actually pulled down their lips in order to display an injury to the inside of the mouth, and then indicated that he did not know if he took the photographs himself, stating that it may have been the sergeant who was also present. Howley admitted that pulling the lip to expose an injury has been police practice in the past.

Howley agreed he was not present when the injury took place, and denied seeing any swelling in the photographs of [REDACTED]. Howley also agreed that [REDACTED] told him that the Respondent hit her twice, and that he saw an injury, although he admitted that there

was no independent information other than [REDACTED]'s statement that indicated what caused the injury.

On re-direct examination, Howley specified that he only had a "minor" conversation with [REDACTED] before the interview. He stated that the conversation only involved introducing themselves, apologizing for the time of night, and had nothing to do with the actual case until they sat down with the tape recorder. Regarding the 49, Howley testified that he did not recall who wanted the sentence phrased "No injuries were observed" but did state that a lot of times 49s were prepared by copying and pasting from other 49s, and that mistakes sometimes occur. He also stated that he did not know if the phrase "No injuries were observed" referred to physically seeing her or the photos. Howley also testified that there was a sentence in the 49 claiming that Kuhno sustained a minor injury on her lip, and the only other place in the 49 injury was mentioned came in the conflicting sentence in Paragraph 3.

Sergeant Charles Cinao

Sergeant Charles Cinao, who has worked for the Department for approximately 18 years, was assigned to the Chief of Detectives Investigations during the incident on February 1, 2007. Cinao stated that he was assigned a follow-up investigation involving the case of the Respondent. Having reviewed the documents and the Command Log record, Cinao said that there were approximately five reports made on the incident. The first report was made by Schmidt at 10:02 p.m., and the second call came from Lieutenant Salvatore Salerno at 11:11 p.m. Cinao stated that the log gave the impression that the call from Salerno came after he spoke with the Respondent. Cinao testified that



as part of his follow-up investigation he interviewed [REDACTED] over the phone on February 15.

Cinao stated that most of the conversation focused on [REDACTED]'s relationship with the Respondent, and that they had been having a tough time due to some problem with the child. When Cinao asked Kuhno if the Respondent ever struck her, [REDACTED] denied it, saying it never happened. Cinao further testified that [REDACTED] claimed she told the other investigators that the Respondent had struck her because "she was trying to reach out for help because of the scenario between her and her husband; they were having tough times." Cinao also indicated that [REDACTED] claimed she had a good relationship with her husband and that she was remorseful she made the allegation. [REDACTED] did claim to Cinao that she had an argument with the Respondent on February 1, but at the time of Cinao's interview [REDACTED] stated that their relationship was good and that there had been no problems, "she only had good things to say about him." [REDACTED] also said that The Respondent began living with her again a day or two after the incident. During the interview, Cinao asked [REDACTED] why she was sorry she made the call, and [REDACTED] informed him that she did not want to get the Respondent in trouble. She explained calling the police was her way of seeking aid. [REDACTED] did not, however, specify the reason she needed aid, and Cinao stated that he did not ask her to elaborate on the problems they were having in their relationship because he "didn't want to pry."

During the interview, [REDACTED] did not specify what type of trouble she was referring to when she stated that she did not want to get the Respondent into trouble. The interview was not recorded in any way, nor was a transcript or any other form of documentation made of the interview. [REDACTED] did not give any kind of documentation to

Cinao after the interview affirming that she, in fact, had not been struck, nor did she call the [REDACTED] and tell them she had never been struck.

During the course of his investigation, Cinao obtained the 911 call from the [REDACTED] and made two corrections on the transcript due to omissions. The corrections involved adding inaudible statements made by [REDACTED]'s daughter and the Respondent. The CD containing the 911 call was stipulated into evidence as DX 5A, and the transcript was stipulated as DX 5B.

On cross-examination, Cinao acknowledged that [REDACTED] claimed the allegation of hitting against the Respondent was her way of asking for help in the stressful situation that developed due to her child, and denied that she was asking for help from any physical abuse. Cinao denied asking [REDACTED] about the specific injury the SCPD had claimed they observed and had no reason to ask about an injury because she indicated she had never been struck. Cinao also denied that there were any discussions about the normal habits or reactions of the Respondent when they argue as a couple, nor was there any discussion about the Respondent removing himself from an argument.

Cinao clarified that [REDACTED] was referring to the repercussions of the initial 911 call when she stated she did not want to get her husband in trouble. He admitted it was possible she was recanting at that point solely to get the Respondent out of any trouble he was in as a result of her call, although she never specifically stated anything to that effect. Cinao agreed that the statements [REDACTED] made during his interview with her contradicted the statements she made to the SCPD and the Duty Captain on February 2.

On re-direct examination, Cinao testified that the subject of the Respondent's employment never arose during the interview.

The Respondent's Case

The Respondent called Lieutenant Salvatore Salerno, Doctor Emily Kriegel Dearden, and Captain Christopher Tamola. The Respondent also testified on his own behalf.

Lieutenant Salvatore Salerno

Lieutenant Salvatore Salerno has been assigned to the 103 Detective Squad for approximately 18 months. He has known the Respondent since June, when the Respondent was assigned to the 103 Squad upon recommendation by a sergeant working for Salerno at the time. The Respondent worked for Salerno for approximately a year and three months. During this time period, Salerno described the Respondent as "Very conscientious, a very hard-working detective... [H]e was definitely a good role model, very active, made a lot of arrests." Salerno also stated that the Respondent created an initiative regarding cell phones that was accepted by the Deputy Commissioner of Operations, and that partially due to this initiative he was reassigned to the Central Robbery Unit. Salerno also characterized the Respondent as "definitely honest."

Salerno was the Respondent's commanding officer during the time of the incident on February 1, 2007. Salerno testified that he had a conversation with the Respondent the night of the incident. The Respondent called Salerno at his home, and stated that he had a domestic dispute with his wife. [REDACTED] was getting irrational, and so the Respondent left their house. A short time later, the Respondent received a phone call stating that the police were at his house. Salerno remembers the Respondent stating that [REDACTED] would not allow him to talk to the officers over the phone, and so the Respondent

went to the [REDACTED] D Precinct. Salerno did not ask the Respondent what had happened between him and his wife.

After the call, Salerno called the IAB Command Center and also responded to the 4 Precinct, although he did not have a conversation with the Respondent regarding the incident because he did not want to interfere with the investigation. Salerno believed that the Respondent was not aware of the allegations against him when he reported to the 4 Precinct.

On cross-examination, Salerno agreed that he called in the case to IAB shortly after he got off the phone with the Respondent, and that he recalled reviewing his Command Center tapes. Salerno acknowledged that during the interview he estimated that the incident took place at 10:45 p.m.

Salerno also agreed that he had a good relationship with the Respondent, and that he was the Respondent's commanding officer at the time of the incident. Salerno affirmed that the Respondent was a good detective, and that he was aware the Respondent had a sick daughter at the time of the incident. Salerno denied having any indication that the Respondent had prior problems with his wife, and denied that he would not want to see the Respondent get into trouble if he did something wrong. Salerno admitted he was not present when the incident occurred, and that he did not know what happened. Salerno conceded he had expressed he did not want to see the Respondent get into a lot of trouble over this case, and that he had contacted the Department Advocate's Office in order to change the case to a B CD rather than a charge.

Doctor Emily Kriegel Dearden

Dr. Emily Dearden, employed by the Department, worked in Psychological Services in February of 2007 where she completed psychological examinations for members of the service, both civilian and uniformed, whenever they sought her help or were referred for other reasons. Dearden testified she met with the Respondent as the result of a referral on February 5, 2007. She stated that in the course of her investigation she contacted [REDACTED] via telephone and had a lengthy conversation.

During the conversation, [REDACTED] told Dearden that earlier events on February 1 had caused [REDACTED] to become very upset and agitated prior to the Respondent returning home. [REDACTED] stated that during the evening her daughter was brushing her teeth with the Respondent's assistance and spilled some toothpaste on her pajamas. "[REDACTED] saw that, she flipped out." This incident led to a verbal argument between [REDACTED] and the Respondent.

Dearden testified that during this argument [REDACTED] was yelling and screaming at the Respondent and calling him "bad names." Dearden also testified that [REDACTED] threw household objects in an attempt to vent her anger. During this engagement, [REDACTED] told Dearden that the Respondent "first tried to talk with her and then sort of stepped back, detached a little bit." When [REDACTED] opened the door and told him to get out, the Respondent pushed past her and went upstairs to do household tasks, slamming the door in the process. When Dearden asked [REDACTED] if there was any physical contact, [REDACTED] denied ever having been hit or slapped during their entire relationship and that the extent of their physical contact was when he pushed past her to slam the door. Dearden asked [REDACTED] about the cut on her lip, and "she said that due to the weather, her lips were dry

and cracked, and from all the yelling and screaming that the crack broke open and that's what the blood was from, but that he did not hit her."

Dearden clarified her understanding was that "[the Respondent] didn't take her and push her out of the way. He went to close the door and she was standing in the way and that he brushed her out of the way, but not that he put his hands on her and pushed her," although she did not take notes on what exactly [REDACTED] meant when she said the Respondent pushed past her. Dearden also testified that [REDACTED] did not explain why she had earlier expressed that the Respondent had hit her.

Dearden explained that it was standard procedure to reach out to all of the people involved in an incident to get all the different stories in order to make the best decision regarding fitness for duty status. She did not feel anybody had spoken to [REDACTED] and coached her to say certain things or threatened her if she did not recant the story, although she did not inquire as to [REDACTED]'s personal reasons for changing her story. Dearden also testified that she believed the information that [REDACTED] told her over the telephone was true.

Dearden stated that she asked [REDACTED] how the Respondent normally behaves during fights, and [REDACTED] told her that he will at first talk and then "detaches." Dearden indicated that "detaches" meant he might leave, or he might "go upstairs and fold laundry," or "take the videos and go out and return them to the library...stuff like that, to get away." Dearden testified that according to [REDACTED] the actions the Respondent took during this argument were consistent with prior arguments. [REDACTED] also described the Respondent as "a teddy bear."

On cross-examination, Dearden agreed that [REDACTED] indicated she had argued with the Respondent in the past. She also agreed that sometimes he would leave the residence or immediate area during arguments. Dearden stated that [REDACTED] did not indicate whether or not she had called the police in the past.

Dearden denied having reviewed any of the other materials on the case, nor did she speak to any of the officers or investigators involved. Dearden also denied having reviewed the 911 tape, and denied having ever spoken to [REDACTED] in person. Due to the fact that Dearden only interviewed [REDACTED] over the telephone, she admitted she did not have an opportunity to observe [REDACTED]'s physical demeanor or body language. Dearden denied ever having discussed a concern about getting the Respondent in trouble.

On questioning by the Court, Dearden explained that she only reviews the paperwork involved with the case if there is any uncertainty after she interviews all the parties involved. According to Dearden, there was no uncertainty after speaking with the Respondent and [REDACTED] that would lead her to inspect the paperwork.

#### Captain Christopher Tamola

Captain Christopher Tamola, having worked for the Department for 17 years, was assigned as the Queens North Duty Captain (which includes [REDACTED] County) on February 1, 2007. Tamola testified he responded to the residence of the Respondent on that night with Howley and Burke prior to 1:45 a.m., and that the initial incident at that location occurred at 9:05 p.m. Prior to arriving, Tamola reviewed the Domestic Incident Report, but could not recall if he spoke to the county officer involved. Tamola also reviewed a

report titled "PEPR" containing personal information of the Respondent, which included his background, duty status, prior domestic incidents, and other pertinent information.

When Tamola arrived at the residence, only [REDACTED] was present. He had a brief conversation with her introducing himself, and then he, Lieutenant Howley and Sergeant Burke proceeded to conduct and record an interview with her. Tamola testified that he dictated in a 49 (RX A) to Queens North Investigation personnel, and that he reviewed and read the full 49 before he signed it. Tamola affirmed that it was his signature on the last page of the 49. Tamola testified that the information in the 49 came from both the information collected by the SCPD and from his personal interview with [REDACTED]

Paragraph 3 of the 49 contained the sum and substance of the facts as reported to Tamola and he stated the "following narrative is based upon an interview of Mrs. [REDACTED] [REDACTED]...and a review of pertinent [REDACTED] County Police Department records:

On Thursday, February 1, 2007, at approximately 2105, Mrs. [REDACTED] called 911 to report a domestic dispute between herself and her husband of five years, Detective Kuhno. Police officer Osso...of [REDACTED] County 4<sup>th</sup> Precinct responded to Officer Kuhno's residence...and prepared a domestic incident report on the complaint of Mrs.

[REDACTED] Detective Kuhno left the scene prior to the arrival of responding [REDACTED] County Police Officers. Mrs. [REDACTED] stated she was involved in a verbal dispute which escalated into a physical altercation where detective [REDACTED] struck her two times in her face. Mrs. [REDACTED] said she could not recall if Detective Kuhno used an open or closed hand. Mrs. [REDACTED] sustained a minor cut on her lip and refused medical attention. She informed the responding [REDACTED] County Officers that she did not wish to pursue criminal charges against her husband. Mrs. [REDACTED] was interviewed by the undersigned at her residence.



This interview was electronically recorded ....She reiterated the above allegations and said that this was the first time that an argument between herself and her husband had escalated into a physical altercation. Mrs. [REDACTED] was advised of the availability of counseling services and her options to pursue an Order of Protection. Photographs were taken to document Mrs. [REDACTED]'s condition, no injuries were observed." (RX A)

Tamola stated that the pictures of [REDACTED] taken that night did not display an injury to her face, and also that he did not see an injury when he was on the scene, despite the fact that [REDACTED] claimed there was an injury. Tamola also testified that if he observed any swelling or redness on [REDACTED]'s face he would have recorded it in the 49.

On cross-examination, Tamola admitted [REDACTED] had previously told the [REDACTED] PD that she had suffered an injury. Tamola also recalled [REDACTED] telling him she was struck. He did not recall if he ever asked [REDACTED] to see her injury or for her to point the injury out to him. Tamola admitted that it was possible an injury, specifically inside the lip, could have existed that he did not observe. Tamola explained he goes on about 100 callouts a year, and that he does not have a strong recollection of the case, needing to review the documents and photographs to recall it.

Tamola agreed his interview with [REDACTED] occurred about three hours after the incident. Tamola also agreed there was a change to the Respondent's duty status after the incident, and that he personally made that decision in the best interest of the Department based upon the violence of the incident. Tamola also affirmed that he found [REDACTED] credible during his interview with her.

On re-direct examination, Tamola testified that he would not ask a complainant to show him an injury if he could not see it, and would still order photographs taken of the

area of the injury whether he could observe it or not, although he would do his best to document the injury.

### The Respondent

The Respondent has been employed by the Department for 17 years and has been a detective for 12 years. The Respondent testified that he has been married (to [REDACTED]) for seven years and in a relationship with his wife for twelve years. He also testified that he has a five year old daughter with [REDACTED] a [REDACTED]. He stated that they were distraught when their daughter was diagnosed, and that his wife "broke down" when their daughter was given last rights in the hospital. He stated, "[My wife] hasn't really been—not the same, but she has less tolerance for anything."

The Respondent testified that [REDACTED] has "no time," and gave a detailed description of the extensive procedures they must follow every day for their daughter's [REDACTED]. He stated that his wife is very "regimental" with their daughter's [REDACTED] and wants everything done exactly on time.

The Respondent also stated that during this time period he and his wife were attempting to have another child. They were going through [REDACTED], requiring [REDACTED] to [REDACTED].

At that point, the Respondent was asked if he ever had a discussion with [REDACTED] about her coming in to testify. He stated, "My wife wants to and doesn't want to at the same time...She's embarrassed. She's mortified. I don't want her to get beat up here on the stand by either Ms. McFadden or you...I don't want her to have to go through this. She has enough stress. She has enough worries. I try to take all that away...I don't want her having to deal with the stress of being here, with having to say what really happened.

And I don't want to bash my wife. I don't. I love her. I don't want to come up here and—I'm upset that in order to defend myself I have to bash her to a degree." He also stated that his wife was currently on bed rest due to her pregnancy. The Respondent also testified that [REDACTED] hates the fact that he is employed by the Department, specifically that he must work overtime, weekends, holidays, "crappy tours," and the fact that he is used and abused, "all the things that go on with being a cop and a detective. She hears the horror stories." The Respondent testified that he never told his wife not to come in.

The Respondent said that when he returned home from his tour on February 1, 2007, [REDACTED] was in a loud dispute with her mother. Both parties eventually left, and when his wife returned he attempted to pacify her. Later that night, some toothpaste got on their daughter's pajamas as the Respondent was getting her ready for bed. When [REDACTED] saw this she became "very upset. 'We've got to change her pajamas now. Why can't you do anything right? What the hell is going on with you? Can't you brush her teeth?'" The Respondent said that he tried to calm her down unsuccessfully, and the argument continued after he put his daughter to bed. "She starts yelling at me, screaming at me. She's venting. I know she's venting. I'm trying to let her vent. I'm trying to talk to her. I'm trying to calm her. She doesn't want to hear it. Name calling ensues...She throws the remote at me, tells me to get the fuck out."

The Respondent indicated that at this point he went downstairs to grab the laundry and get away from the argument. "When we fight, I try to avoid her. I go into another room." When the Respondent brought the laundry basket upstairs, his wife resumed the argument. Then [REDACTED] opened the door and told the Respondent to leave, and the Respondent went to close it. He did not recall if he brushed by [REDACTED]. Finally, after

more yelling by [REDACTED] the Respondent decided to leave and went to the basement to change out of his pajamas. He grabbed some tapes from the library and left to return them.

The Respondent testified that he did not know [REDACTED] was on the phone at any point while he was still in the house. He realized she had called the police when she later contacted him and told him on his way back from a rental property he owns, fifteen minutes away from his residence. The Respondent testified that [REDACTED] has threatened to call the police in the past, citing her hatred for his job and the fact that she knows how to get officers in trouble due to their discussion of cases when he was a delegate. He testified that he has since heard the 911 call, and that he did not recall hearing anything like that at the time when they were having the fight. He admitted that his voice was on the tape in the background, but the Respondent stated that he was downstairs at the time that he heard his wife's yelling and screaming, but he did not know she had called 911. He admitted that he was yelling back at her from downstairs.

The Respondent said that he did not have any physical contact with [REDACTED] and that at no time did he punch, kick, or slap her, nor did he see any marks or abrasions on [REDACTED]'s lips. The Respondent testified that [REDACTED]'s lips get chapped in the winter, and that the problem was exacerbated in his household due to the fact that they cannot have a humidifier, as one would pose a threat to his daughter's health. Due to this fact, each member of the Respondent's family has had cracked and bleeding lips at some point in the past. The Respondent also stated that he did not push by [REDACTED] and that he simply closed the door. "I didn't brush up against her. I had no knowledge and no recollection

of any physical contact that I had with her at any point in time. I don't even know how you would describe brushing up against her."

In response to the Court inquiring as to why [REDACTED] would make up her story, the Respondent stated that [REDACTED] made up the story about being hit in order to "show me that she and my daughter are the only thing in the world that matters, not this stupid job. She hates this job. She wants to show me that any point that I don't do what she says and if I don't go by her rules and her guidelines in the house, she can take everything away from me. She can just do anything that she wants." He also stated that his wife would do anything to win an argument if she feels that she is right, and that she wanted to demonstrate the ability to interfere with his career. He also stated that [REDACTED] had been to [REDACTED] and [REDACTED], although she disagreed with the diagnosis and refused to take medication. The Respondent also stated [REDACTED] blamed him for his daughter's [REDACTED] on account of his job.

The Respondent stated that he and [REDACTED] used to discuss cases that he dealt with as a delegate. They had "plenty" of conversations involving cases where one member of a relationship made a call and had the other person suspended or arrested, and [REDACTED] threatened to make such a call on the Respondent, although he never believed she would actually do it.

After leaving his residence, the Respondent first went to the library and then to a convenience store called Gasoline Heaven. He then proceeded to his rental property, where he began to clean. He stayed at the rental property for approximately an hour, and received a call on his cell phone as he was getting ready to leave. Referring to a cell phone bill that displayed a call log, the Respondent testified that he took a call from his

wife at 10:41 p.m. after ignoring a call from her five minutes earlier. At that point [REDACTED] informed the Respondent she had called the police and that they were present at the house. The Respondent testified that [REDACTED] refused to allow him to speak to the officers present at the house, and that he did not believe her at first because he felt there was no reason for the police to be there.

After the call with his wife, the Respondent called the 103 Precinct in order to get the number for his Lieutenant as he began driving to the 4 Precinct. At 10:46 p.m. he got in touch with his Lieutenant, who instructed him to go to the Precinct and to call operations. He arrived at the 4 Precinct at approximately 11:00 p.m.

At the Precinct, they asked the Respondent a couple questions and took photographs of his hands in order to ascertain if he had any redness or swelling indicative of hitting somebody. This point was the first time the Respondent heard the allegations that he had struck [REDACTED]. He was also informed he was being modified and had to turn in his ID card and shield, although he was not arrested or given any sort of appearance ticket.

The next day the Respondent went to [REDACTED], where he spoke to Dearden, and was informed he would have to go to domestic violence classes, which he subsequently completed. Although no type of modification was placed on the Respondent for a psychological or medical hold, he was not returned his firearms, and still cannot currently perform enforcement duties.

On cross-examination, the Respondent admitted that he had previously gotten into arguments with [REDACTED], and that those arguments involved yelling and name calling by both parties. The Respondent said that [REDACTED] had never dialed 911 previous to February

1, and denied having any reason to believe she would call 911 that night. He specified that what was “substantially different” in their argument on that night was the fact that [REDACTED] threw the remote control at him, although his own behavior did not differ in any way. The Respondent acknowledged that he became angry with [REDACTED] although he was initially trying to calm her down. He also admitted not liking the fact that she called him names because “I don’t like being called names...nobody likes being called names. Especially in front of my child.” He also did not like the fact that she threw the remote at him, although he cited the fact that he has a thick skin as a result of his duties. Due to this thick skin, the Respondent claimed that name calling would not “cause him to do something.” The Respondent again agreed that the events on that night caused him to become angry.

He acknowledged that [REDACTED] had threatened to get him in trouble with the Department in the past, although he denied that she had ever called anybody before. The Respondent affirmed that [REDACTED] now understands the consequences of what she alleged, although she did not care at the time of the incident. The Respondent felt that his wife now understood the implications of his change in duty status, and that previously she had thought reporting him would just cause him to “get yelled at and that’s it.” He denied ever discussing the punishments in cases or using the words “modification” in his household, and clarified that she would not even know what it meant even though he previously testified that he discussed domestic incidents cases with her.

The Respondent agreed that the ramifications of this incident initially caused additional stress in his relationship with [REDACTED], although he explained the incident has helped her finally seek help for her problems. He added, “So in hindsight, for a personal

relationship for me and [REDACTED], this has actually benefited us.” The Respondent denied that [REDACTED] had made any threats to report him since the incident and clarified she did not frequently make the threat before, only when she felt she needed to say something to end an argument. He admitted hearing such threats coming from her was upsetting, although he has never wanted to end their relationship because of it.

The Respondent acknowledged that he was downstairs on the first floor while his wife called 911 from the second floor. He also acknowledged that he was yelling in the 911 tape, but denied hearing anything “that my wife specifically said to me at all when she’s upstairs...I’m hearing her talking, thinking she’s yelling at me. I’m just responding back. I’m just yelling back. At that point I’m not listening to anything she’s saying. I’m getting dressed, putting my pants on, my stuff on, grabbing the tapes and leaving.” He also did not hear his daughter say “Where are you going, Daddy?” and did not recall if he heard his daughter say that while reviewing the tape. He admitted his daughter was upstairs, and agreed she would not be able to see him leave, but stated that she could hear him leaving and had heard the conversation between the Respondent and [REDACTED] about him leaving earlier in the argument.

The Respondent agreed that [REDACTED] did not give a reason for calling the police, and denied having asked her. He explained that he did not believe she had actually called 911 because “there was no reason for me to think that.” He also cited the fact that she refused to allow him to speak to the officer. He stated he finally believed her after further questioning.



FINDINGS AND ANALYSISSpecification No. 1 and 2

The Respondent is charged with wrongfully engaging in a physical altercation with his wife [REDACTED]. He is also charged with after having been involved in an unusual police occurrence, did fail to remain at the scene of said incident as required. This Court finds, based on [REDACTED]'s recorded statements to the [REDACTED] County 911 operator and to Department investigators and the testimonies of responding [REDACTED] County police officers that the Respondent is Guilty as charged.

[REDACTED]'s Cry For Help

This Court reviewed [REDACTED]'s call to 911 and found it to be a frantic cry for help moments after the incident with the Respondent. She began her apparent emotional plea by telling the 911 operator that the problem was a "Family dispute, okay, my husband hit me. Please send someone okay? When asked if she was injured she, without hesitation, stated "I don't know, my lip is probably bleeding." Her sense of urgency was also evident in her voice when she stated "I have a four year old, no I don't need an ambulance I just need him, I don't feel safe right now...." When she was told that someone will come to her she responded "I'll just stay on the phone because he won't leave. I just want him to get out."

The operator then told [REDACTED] to "try to calm down for your child...[because]you don't want him to hear you yelling and being upset." [REDACTED] told the operator that she "just" wanted to get her daughter who was "upstairs" and yelled to her if she was "okay?" When the operator asked her if "he" (Respondent) was with her [REDACTED] replied "He went

down now.” When she was again asked if she was alright she stated “I think so. My husband’s a city cop but he, but he frightens me at times.” When she was again asked if he was still there [REDACTED] replied “Yes he’s still here.”

At one point, [REDACTED] their daughter is heard to say “Daddy. Where are you going Daddy?” [REDACTED] is then heard saying “You didn’t learn.... Keep your hands to yourself.” When she was again asked if she was okay [REDACTED] replied “Yeah. He’s more worried about his job right now....” A male voice, the Respondent’s, is heard yelling in the background and [REDACTED] told the operator that “he wants me to hang up...he’s leaving the house.”<sup>4</sup> He’s always up in my face; he wants me to be afraid of him. He’s leaving now.” As [REDACTED] was informing the operator of this last piece of information [REDACTED] could be heard saying “Daddy.” (DX 5 A and B)

[REDACTED]’s recorded cry for help to a law enforcement authority, moments after the physical altercation with the Respondent, is not only strong evidence that he made physical contact with her face, it also convinces this Court that he was present in the house when she made the call. This Court is equally convinced that he knew [REDACTED] had called 911 because she was crying and speaking loud enough for him to know that she was speaking to a 911 operator. Moreover, after becoming aware of her 911 call he also had to know that the police would respond to his home to assist his wife and that he should have remained there as required by the Patrol Guide. He decided not to wait, however, and left before the responding officers arrived as evidenced by his daughter, [REDACTED] asking him “Daddy. Where are you going Daddy?”

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<sup>4</sup> The Respondent admitted that it was his voice on the recording but he claimed he was downstairs at the time of the call.

While [REDACTED]'s 911 call is strong evidence that the Respondent made physical contact with her it is not the only evidence that supports her initial cry for help. At approximately 10:00 p.m., on February 1, 2007, Officers Osso and Kramer of the [REDACTED] County Police Department received a call to respond to the [REDACTED] residence in response to her 911 call. They were informed over the radio that there was an incident between a husband and wife where the wife was struck twice and that the husband was a member of the Department. They arrived at the residence at 10:17 p.m. (DX 1) Upon their arrival [REDACTED] told them that she and the Respondent had a verbal argument, which included name calling, and the Respondent either punched or slapped her in the face just prior to her calling 911. Osso and Kramer also observed a small cut or laceration to [REDACTED]'s lip.

Osso prepared a Domestic Incident report (DIR) detailing a narrative of his investigation. In the narrative portion of the report he noted that a verbal dispute between [REDACTED] and the Respondent "escalated and the compl[ainant] stated that they called each other names and he then either punched or slapped her in the face twice. Compl[ainant] received a minor cut on lip and refused medical attention..." He also noted that the complainant refused to press charges. (DX 2)

In the "Victim's Statement of Allegations" rather than have [REDACTED] "rewrite the whole thing again" he allowed [REDACTED] to write "same as above" indicating the same facts as in the narrative section. Osso also wrote in the victim's statement area "He hit me in the face twice." While [REDACTED] refused to "press charges" against the Respondent she nevertheless signed the report in the space provided for the "Victim's signature," essentially stating for the third time to police that the Respondent had struck her.

Sergeant's Schmidt testified that when he arrived at the [REDACTED]'s residence he also remembered seeing a minor injury to [REDACTED]'s mouth area.

[REDACTED]'s Interview with Department Investigators

[REDACTED] was also interviewed by Department investigators Howley and Tamola who also testified at trial. During that interview [REDACTED] told the investigators that she and the Respondent argued and there "were words exchanged back and forth" and she was calling him "names." As they argued the Respondent "would come you know in my face" because "he didn't want to be called names..." When she was asked if he got physical with her she again, for the fourth time told investigators "Yeah it got physical...Again he told me you know stop calling me names, we can't do this blah, blah, blah and he was getting in my face I couldn't step away and just the same thing back and forth...he'd step in my face, get away and then I got angry because he was on my face. I said I'm not afraid of him, he said yes you are and when he stepped away I threw the [television] remote, broke the remote, and then ah at the time I don't remember when ah he hit me on the side of the face....He struck me but I don't remember if he struck me before or after I threw the remote."

[REDACTED] did not remember if the Respondent struck her with an open or closed hand but she remembered that she was struck on the left side of her face. She then stated that she called 911 because she "warned him not to do it and I was going to call..." She further stated that at one point she was struck a second time and that as she was calling 911, "He told me not to..."

She further told investigators that the Respondent knew she called 911 "because I was giving information over the phone." She also informed the investigators that she did not want the Respondent arrested; she "just wanted to have it documented. They [REDACTED] (PD) asked me you know if you wanted to get an order of protection and I said no, just document it." (DX 4A and B)

Howely also testified that while the photographs of [REDACTED] did not reveal a cut to her lip he observed that she had an abrasion or cut on her lip on the inside of her mouth.

#### [REDACTED]'s Recantations

[REDACTED] was subsequently interviewed by Doctor Dearden and Sergeant Cinao, both times over the telephone and basically withdrew her allegations against the Respondent. On February 5, 2007, during her interview with Dearden she recanted her allegations that the Respondent struck her. She told Dearden that there was an argument between her and the Respondent and she called him "bad names." [REDACTED] also stated that at one point she told the Respondent to get out and he pushed past her and went upstairs to do house hold tasks. According to Dearden, [REDACTED] denied that there was any physical contact and further denied ever having been slapped or hit by the Respondent during their entire relationship.

When Dearden asked [REDACTED] about her cut lip, [REDACTED] told her that "due to the weather her lips were dry and cracked and from yelling and screaming and that the crack broke open and that's what the blood was from, but that he did not hit her. Dearden testified that [REDACTED] did not explain why she had earlier expressed that the Respondent had hit her.

Dearden had not reviewed [REDACTED]'s 911 recorded call or any other materials related to this case. She also did not speak to [REDACTED] in person where she would have been able to observe her overall demeanor as she answered Dearden's questions.

On February 15, 2007, during her interview with Ciano, she also denied that the Respondent struck her and claimed that she told other interviewers that he hit her because "she was trying to reach out for help because of the scenario between her and her husband; they were having tough times." According to Ciano, [REDACTED] claimed that she had a good relationship with the Respondent and that she was remorseful she made the allegations. While she admitted that she had an argument with the Respondent on February 1, "she only had good things to say about him." When Ciano asked [REDACTED] why she was sorry she made the [911] call she replied that she did not want to get the Respondent in trouble. Ciano did not ask [REDACTED] about her injury and claimed that he had no reason to because she stated that she was not hit.

#### The Respondent's Version

The Respondent testified that [REDACTED] had mixed feelings about appearing at this trial—"my wife wants to and doesn't want to at the same time...She's embarrassed. She's mortified. I don't want her to get beat up here on the stand...." He went on to say that he did not want her "having to deal with the stress of being here, with having to say what really happened. And I don't want to bash my wife....I'm upset that in order to defend myself I have to bash her to a degree." He added that he never told his wife not to come in to testify.

While he claimed to be upset about bashing her he proceeded to blame the whole incident on her. He stated that the incident basically started when some toothpaste got on their daughter's pajamas and [REDACTED] became "very upset." He tried to calm her down but she accused him of not doing "anything right." [REDACTED] continued to yell and scream at him calling him names and at one point she threw the television remote at him and told him "to get the fuck out." At that point he decided to get the laundry basket and bring it upstairs as she continued to argue with him. When [REDACTED] opened a door and told the Respondent to leave he went to close it and could not recall if he brushed by [REDACTED]. After she continued to argue he decided to leave the house and went to the basement to change out of his pajamas, grabbed some tapes from the library and left to return them.

When he was asked why [REDACTED] would make up a story that he struck her he again place the entire blame for his predicament on her where he replied that she did it to "show me that she and my daughter are the only thing in the world that matters, not this stupid job. She hates this job. She wants to show me that at anytime that I don't do what she says and if I don't go by her rules and guidelines in the house, she can take everything away from me. She can just do just anything that she wants." He testified that she had threatened to call the police in the past because of her hatred for his job and because she knows how to get officers in trouble due to her knowledge of the Department.

The Respondent adamantly denied knowing that [REDACTED] was on the telephone at anytime with the police even though he was clearly in the house and, by the sound of his voice on the recording, was in close proximity to her as she made her loud and emotional plea to the 911 operator. He unconvincingly claims that the first time he became aware

of the police being called was when [REDACTED] called him after the police arrived at the house. While he admitted that he heard his voice on the 911 tape, he claimed that he was downstairs at the time he heard [REDACTED] yelling upstairs, and did not know that she had called 911. He stated that he could not hear what she was specifically saying to him when she was upstairs and offered as an explanation that "I'm hearing her talking, thinking she's yelling at me. I'm responding back. I'm just yelling back. At that point I'm not listening to anything she's saying. I'm getting dressed, putting my pants on, my stuff on, grabbing the tapes and leaving." He also stated that he had no reason to believe that the police were called because they had previously gotten into arguments and those arguments involved yelling and name calling by both parties and [REDACTED] never called 911 on those occasions even though she had threatened to get him in trouble with the Department in the past.

He also unconvincingly claimed that he did not hear his daughter ask "Where are you going, Daddy?" and could not even admit that he recalled his daughter ask that question on the tape even after he listened to the 911 recording. His denial is especially hard to believe given that he testified that his daughter has a [REDACTED] and this Court would expect that he would always want to hear his daughter's words which might alert him to act to a serious turn in her [REDACTED]. But his denial is understandable to this Court because his daughter's question meant that he was clearly in the house and in close proximity to the telephone where she was with her mother during her 911 call.

While the Respondent stated that he did not have any physical contact with [REDACTED] and at no time did he punch, kick or slap her, he did acknowledged that he became angry with her, although he was initially trying to calm her down. He admitted



not liking the fact that she called him names because "I don't like being called names...nobody likes being called names. Especially in front of my child."

The Respondent simply and again unconvincingly explained away the cut on [REDACTED]'s lip as chapped lips which she gets in the winter time and which are exacerbated by the fact that they cannot have a humidifier in the house because of their daughter's [REDACTED]. According to his explanation her chapped lips have been known to bleed in the past. The Respondent, however, made no mention of her lips bleeding that night and claimed that he did not see any marks or abrasions on [REDACTED]'s lips.

#### The Court's Findings

This Court cannot fully explain why, after making a credible emotional cry for help to the 911 operator and equally credible statements to police and investigators that the Respondent struck her, [REDACTED] backed off from her allegations and claimed that it was just a verbal argument. It might have been more credible had she opted to appear in Court and under questioning by both counsels and scrutiny by the Court explained why her prior allegations should not be believed. But she did not do that. Instead she left it up to the Respondent to explain that she was "embarrassed" and "mortified" at making the allegations against him and that it would be too stressful for her to appear.

This Court finds, however, that [REDACTED]'s initial cry for help and statements of being hit by the Respondent are too convincing to be negated by her denials during superficial telephone conversations where once she said that nothing happened the essence of the interview was over. Moreover, it is highly conceivable that once the proverbial dust settled after the incident, [REDACTED] more than likely became concerned for

the Respondent's future employment with the Department and chose not to proceed with this case. While this Court offers this reasoning as an educated clue to her recanting it does not rely on it for guidance. [REDACTED]'s own words and the number of times she used them are what convinces this Court that they had an argument, called each other names and at one point the Respondent made physical contact with her.

In addition, this Court finds that the Respondent, during his testimony, was less than forthright. He professed his innocence and while he claimed to be upset that to defend himself "I have to bash her to a degree" blamed everything on [REDACTED] in that she knows how to get police officers in trouble and made up the story to show him that if he does not live by her rules and do what she says she can take everything away from him.

The Respondent's cannot and should not be believed and based on the foregoing, I find the Respondent Guilty as charged in Specification Nos. 1 and 2.

### Specification No. 3

The Respondent is charged with wrongfully impeding an official Department investigation in that he provided inconsistent statements to members of service regarding a domestic incident which occurred on February 1, 2007.

The Department made a motion to dismiss this specification because when this charge was added the Department believed that the Respondent made inconsistent statements: one to Lieutenant Salerno of the 103 Precinct where he appeared to not have knowledge that the police were at his home and he was making a notification to his commanding officer about a domestic dispute he had with his wife and that he would respond to the precinct if necessary. His second statement that the Department believed

was inconsistent with the first was made during his official Department interview where he stated that his wife had contacted him informing him that the police were at his house and he responded to the precinct in [REDACTED] with the knowledge that they were there. The Department Advocate informed this Court that the "conflict was his knowledge about whether or not the police were at his residence." While the Department's position is that it is "clear" that when the Respondent called his commanding officer he was aware the police were at his home but concluded that "there is not a lot of detail there about how he knows, but it is clear from the statement that his commanding officer got the information from the Respondent.

The Department concluded that there is "no substantial conflict" with the Respondent's statements and moves to have the charge dismissed.

Based on the foregoing, this Court was not presented with any evidence to find that the Respondent impeded an official Department investigation and therefore recommends that Specification No. 3 be Dismissed.

#### PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y. 2d 222 (1974).

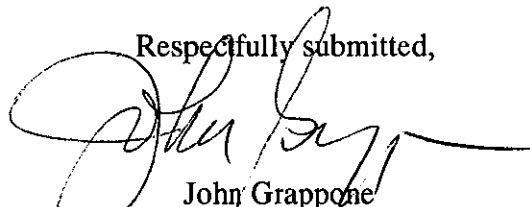
The Respondent was appointed on April 30, 1991. Information from his personnel folder that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Respondent has been found Guilty of engaging in a physical altercation with his wife and failing to remain at the scene of an unusual police occurrence. The

Department has recommended a forfeiture of 20 vacation days as a penalty in this case. But this Court found that the Respondent was less than forthright during his testimony and 20 days is not an adequate penalty for striking his wife and then fabricating a story to the contrary.

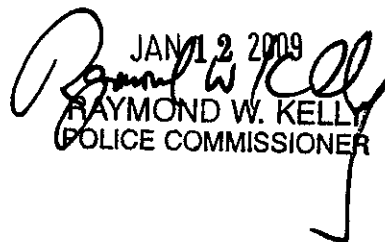
Therefore, based on the foregoing it is recommended that the Respondent forfeit 30 vacation days as a penalty.

Respectfully submitted,



John Grappone  
Assistant Deputy Commissioner - Trials

**APPROVED**



JAN 12 2009  
RAYMOND W. KELLY  
POLICE COMMISSIONER